

**APPENDIX A**  
**2010 MONTANA SUPREME COURT BENCH & BAR SURVEY**  
**Percentage (& Number) of Respondents Who Strongly Agreed or Agreed\***

Survey Question	Overall	Judges	Attorneys	Faculty
1. The Montana Supreme Court's decisions are based on the facts and applicable law.	70.8% (243)	82.8% (24)	69.6% (208)	80.0% (4)
2. The Montana Supreme Court's published opinions clearly state the appropriate rule of law, identify and apply standards of review, and provide instructions on remands.	76.1% (261)	85.7% (24)	74.8% (226)	100.0% (5)
3. The Montana Supreme Court's published opinions explain deviations from the principle of <i>stare decisis</i> and the adoption of new developments in the law.	62.5% (208)	75.9% (22)	61.2% (178)	66.7% (4)
4. The Montana Supreme Court issues opinions in adversarial cases in a timely manner.	81.8% (274)	100.0% (28)	80.7% (238)	83.3% (5)
5. The Montana Supreme Court completes its overall workload in a timely manner.	85.9% (280)	100.0% (29)	84.8% (245)	100.0% (3)
6. The Montana Supreme Court treats trial court judges with courtesy and respect in its opinions.	91.6% (305)	82.8% (24)	92.4% (269)	83.3% (5)
7. The Montana Supreme Court treats attorneys with courtesy and respect.	85.0% (289)	92.6% (25)	84.4% (254)	100.0% (6)
8. The Montana Supreme Court provides information about its roles, procedures, and operations.	92.0% (297)	96.7% (29)	91.4% (256)	85.7% (6)
9. The Montana Supreme Court's attorney disciplinary process is fair.	75.5% (188)	96.2% (25)	74.0% (159)	66.7% (2)
10. The Montana Supreme Court imposes disciplinary sanctions on attorneys that are proportionate to the attorneys' misconduct.	77.2% (183)	91.7% (22)	76.3% (158)	50.0% (1)

<b>Average Overall</b>	<b>79.8%</b>
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\* Excludes respondents who answered "Undecided or Unknown".

The Supreme Court conducted an electronic survey between September 7 and September 21, 2010. The survey was sent to 960 District Court judges, law school faculty and adjunct faculty, and appellate attorneys involved in cases disposed of by opinion between July 1, 2008 and June 30, 2010. Three hundred seventy-two (372) individuals responded to the survey -- 34 judges, 7 faculty members, and 321 attorneys (10 unspecified) -- for a response rate of 39.6%.

NOTE: Summing the number of responses from judges, attorneys, and faculty members will not equal the overall numbers because not all respondents identified their occupation.

Testimony on SB268 by Robert Filipovich, Helena, MT March 10, 2011

Mr. Chairman, for the record, my name is Robert Filipovich. I live in Helena, MT and I am here representing myself. I oppose this bill.

Concerning Section 4, (1), the seat numbers for the Montana Supreme Court are: Justice Rice-1; Justice Wheat-2; Justice Cotter-3, Justice Baker-4, Justice Nelson-5, Justice Morris-6; Chief Justice McGrath does not have a number on his seat. All this is according to the Chief Justice's secretary Pam Hunthausen.

The Court has been evaluated in 2008 and 2010 by surveys of Montana district court judges, Law School faculty and adjunct faculty, and appellate attorneys involved in cases disposed of by opinion between July 1, 2008 and June 30, 2010. A response rate of 39.6% for the 2010 ten question survey yielded an overall average approval rating (strongly agree or agree) of 79.8%, up from 71.7% in the 2008 survey. (See [www.courts.mt.gov/supreme](http://www.courts.mt.gov/supreme), then click on performance measures

Here are the coming elections under this bill: Seats 5 and 6 will be up for election in 2012. Seats 1 and 2 will be up in 2014. Seats 3 and no number will be up in 2016, and seat 4 will be up in 2018. (This information from the clerk of the Court, phone 444 3858). If there is an undisputed census available and if Montana has the same number of counties as it does today, seats 5 and 6 will be up for election again in 2020.

Black's Law Dictionary, 7<sup>th</sup> edition, 1999 defines gerrymandering: "1. The practice of dividing a geographical area into electoral districts . . . to give one political party an unfair advantage by diluting the opposition's voting strength." My survey of Montana Senate races in 2006 through 2010 shows a political party reversal rate of 10.67%. A case can be made.

After the 1965 Voting Rights Act signaling the end of racial gerrymandering, partisan gerrymandering took the U. S. Supreme Court's attention. In *Davis v. Bandemer* (1986), a 6-3 majority found that attacks on partisan gerrymanders under the equal protection clause were justiciable. (Encyclopedia of the American Constitution 2005 article: 'gerrymandering update'). Black's Law Dictionary defines "justiciable": "properly brought before a court of justice; capable of being disposed of judicially."

The ballot language in Section 9 of SB268 camouflages the radical change from statewide election of all justices to district elections. Section 9 omits the crucial change of these districts being assigned; it also proposes a new<sup>unmentioned</sup> restriction on the appointment of justices. Perhaps most important, it eliminates the voters' right to vote for their Chief Justice.

Finally, this bill puts an interesting twist on the principle of 'one person, one vote'. If this bill becomes law, each Montana voter will only have one vote, for one Supreme Court justice, once every eighth year.